UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CONFIDENTIAL PORTIONS INCLUDED

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| IN RE: | ) | |
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| GARLOCK SEALING TECHNOLOGIES | ) | |
| LLC, et al, | ) | No. 10-BK-31607 |
| | ) | |
| Debtors. | ) | VOLUME I-A |
| | ) | MORNING SESSION |

TRANSCRIPT OF ESTIMATION TRIAL
BEFORE THE HONORABLE GEORGE R. HODGES
UNITED STATES BANKRUPTCY JUDGE
JULY 22, 2013

CONFIDENTIAL PORTIONS INCLUDED

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I N D E X

P R O C E E D I N G S

JULY 22, 2013, COURT CALLED TO ORDER 9:30 A.M.:

MORNING SESSION:

THE COURT: Good morning, have a seat.

We're here for the beginning of the estimation hearing. Let me ask you all to, I guess, first to announce your appearances so that the court reporter will have your names. And I will warn you that during the course of the hearing if she does not recognize your name, she will interrupt and remind you so that she has it properly in the transcription.

So why don't we start over here and go around that way.

MR. GUY: Good morning, Your Honor.

Jonathan Guy for the FCR. I'm here with my colleague Kate Orr and Richard Wyron.

MR. SWETT: Good morning, Your Honor.

Trevor Swett along with Elihu Inselbuch and James Wehner for the Official Committee of Asbestos Personal Injury Claimants. Tom Moon, our Charlotte counsel, is also with us.

THE COURT: Okay.

MR. CASSADA: Good morning, Your Honor.

I'm Garland Cassada with the law firm Robinson, Bradshaw and Hinson, appearing today for the debtors. I'm accompanied by two of my partners Jonathan Krisko and Rich

Worf. There are several other members of my firm in the gallery, but I won't introduce them separately.

MR. HARRIS: Good morning, Your Honor.

I'm Ray Harris for the debtors. I'm joined by my partner Cary Schachter, Lori Fay and my associate Edward Taylor.

MR. CLODFELTER: Good morning, Your Honor. Dan Clodfelter from Moore and Van Allen. We represent Coltec Industries. I'm accompanied this morning by my partner Mark Nebrig and Hillary Crabtree.

MR. RAYBURN: Good morning, Your Honor.

Rick Rayburn, Jack Miller; Rayburn, Cooper, debtor's counsel.

THE COURT: Okay. Well good. All right.

We will begin however you all want to start. Do you want to make opening statements?

MR. CASSADA: Yes, Your Honor. I've conferred with Mr. Swett. I believe for both -- each side will make an opening statement. On our side, the debtors and Coltec will spend about an hour and a half previewing the evidence that you will hear over the next three weeks. I understand the committee and the futures representative will do the same.

THE COURT: All right.

MR. CASSADA: Before we begin, Your Honor, I might bring up a housekeeping matter, and that is that we have filed

a motion to de-designate certain items that have been designated as confidential, that's not confidential. I understand that Your Honor's going to hear that motion tomorrow.

We will be disclosing and displaying in this public court, items that have been designated, and testimony that has been designated as confidential.

Under the stipulated protective order, as we understand it, the court will have to close the courtroom to the public when we do that. That will happen in our opening statement, some time toward the latter part of our opening statement.

I suppose the first order of business will be to determine whether the court, the judge, you should actually close the courtroom during opening statements.

I will say that there are a number of folks here who are from EnPro Industries and the debtor. These are folks who are parties and interested in the case. They have each signed a joinder to the confidentiality order, so I believe they can remain in the courtroom.

There are a number of other people here who I don't know. I don't know if they are party to the protective order or not.

MR. SWETT: Your Honor, I had understood from some correspondence from the court before this morning that you

would prefer to hear the confidentiality motion tomorrow. And if that's the case, then I suggest that we proceed as Mr. Cassada described, and clear the courtroom where matters that have been designated as confidential by parties in interest or others, third parties included, who are not present and not able here to assert their own rights, in deference to the obligations that the debtors incurred in a series of confidentiality stipulations, we really have no alternative but to abide by that procedure and clear the courtroom at the necessary times, unless and until you take up that motion and decide on some other course.

But it is a serious problem, because there are lots of people implicated by those confidentiality rights who are not here and do not have notice of the motion.

THE COURT: Why don't we take up that motion tomorrow morning at 8:30 here. And then for now, when you get -- let's leave things open as long as we can. When you get ready to get into things that would be governed by the confidentiality agreement, just tell us and we will ask those who haven't signed an agreement to leave for that period of time. Okay?

MR. CASSADA: That works.

THE COURT: I think we're obliged to do it as narrowly as we can, as long as we have to do it. Okay?

MR. CASSADA: Your Honor, I should start by telling

you how we hope the day proceeds today. We will make an opening statement, we expect to be in the neighborhood of an hour and a half. You'll hear from me, obviously.

In addition, Mr. Harris will address part of the evidence that you'll hear during the trial. Mr. Clodfelter will make a statement as well. We are hoping that after the committee and the futures representative make opening statements, that we will be at that point at the lunch break, and that we will be able to return after lunch and put two witnesses on the stand and get them completed today. That is our hope. We've given notice of those witnesses to the committee and the futures representative.

Your Honor, Garlock is in bankruptcy, not because large numbers of claimants have meritorious claims against it, but because of the financial burden of defending itself -- but because of the mass burden of defending itself in mass asbestos litigation.

You will hear that Garlock spent approximately $1 billion to resolve hundreds of thousands of non-malignant claims, produced by recruiting practices that everyone now concedes were rife with abuse. This abuse bankrupted the large thermal insulation producers whose products are responsible for causing disease, and workers who now make claims against Garlock.

There is no dispute today that non-malignant claims

have no material value, and that Garlock's liability turns on mesothelioma claims.

Accordingly, we're here today to estimate Garlock's aggregate mesothelioma liability for allowance purposes under Code Section 502(c). The core dispute is whether we look at legal liability head on by assessing the number and amount of valid claims under state law, or that we look indirectly for liability that is allegedly baked into Garlock's past settlements.

Your Honor, we offer the first approach, which we believe is the correct approach under the bankruptcy code.

Our initial evidence, of course, will address our approach, based on evidence gathered through the questionnaire process and other discovery ordered by the court. Our first witnesses will address the merits of cases that claimants can present against Garlock.

The evidence shows that even the best cases claimants can muster, would fail to produce evidence satisfying the standards required to reach a jury on the issue of causation under applicable law.

The *Moeller* case against Garlock exemplifies the application of law. The plaintiff was a pipefitter who routinely installed and removed gaskets. Like all pipefitters -- gasket -- he worked around asbestos insulation. That pipefitter's gasket exposure was in the words of Judge

Alice M. Batchelder, who was the chief judge of the Sixth Circuit Court of Appeals, "a bucket in the ocean compared to exposures of asbestos thermal insulation." Accordingly, as a matter of law, the case did not merit a jury trial. And Judge Batchelder ruled that the *Moeller* case never should have gone to jury.

In the second phase of our case, Dr. Bates will provide a conservative upper bound that the court can safely accept as more than adequate compensation for current mesothelioma claims.

Our economic evidence will show that -- will show what Garlock's legal responsibility would be, assuming contrary to both fact and law that first, every claimant, every current and future mesothelioma claimant was able to identify contact with a Garlock product, will be permitted to proceed to trial and potential judgment.

And second, that no claimant's causation evidence will be excluded under *Daubert*, making these highly claimant friendly assumptions, Garlock's estimated liability for current and future mesothelioma claims under state law is no more than $125 million.

Because our plan provides $270 million to resolve claims, Dr. Bates will explain how the plan provides sufficient compensation to fully satisfy all claims.

Of course this is consistent with what medical

research has discovered long ago, that workers' exposure to friable amphibole insulation, not gaskets, caused mesothelioma.

Now, in addition to presenting evidence on our case based on legal liability, we'll present evidence about why the settlement history approach advocated by the committee and the futures representative is inappropriate in Garlock's case.

That approach of course has been used in past cases by agreement of the parties, and usually when liability was not contested by the debtor. Most recently a version of that approach was used in the *Bondex* case. But this case is not *Bondex* or any other asbestos case.

First, the parties agreed to use settlement data in the estimation trial in that case. Second, the joint compound produced by *Bondex* was friable, and banned by the consumer product safety commission in 1970s. Leading medical researchers pronounced decades ago that asbestos-containing gaskets and packing posed no health risk. But what caused disease was the ubiquitous asbestos-containing insulation present in environments where gaskets were used.

Gaskets and packing have never been banned. Not only are the record and Garlock's positions different, but critical facts are different as well.

The evidence will show that Garlock settled the vast majority of cases because it was cheaper to settle than to pay

lawyers to try cases.

In a relatively small number of cases controlled by a relatively small number of law firms, Garlock paid larger settlements based on incomplete factual records.

The evidence will show that firms securing these settlements often resorted to suppression of evidence to enhance the trial risk against Garlock, precisely because Garlock's having an extraordinarily good chance of securing a defense verdict when all evidence relevant to the cause of plaintiffs' diseases was available.

I will yield to Mr. Harris. He will address the evidence that we will present addressing the merits of claims against Garlock.

I'll follow and describe evidence that will support Dr. Bates' econometric estimation of legal liability, and then I'll conclude by forecasting our evidence that proves that the settlement approaches offered by the committee and the FCR lack merit. And then Mr. Clodfelter will summarize evidence that Coltec will offer.

MR. HARRIS: Good morning, Your Honor.

THE COURT: Good morning.

MR. HARRIS: We firmly believe that no estimation of Garlock's liability, no matter what method the court chooses to use can be fair unless the court fully understands the nature of two very different types of products.

The first is asbestos thermal system insulation that insulates pipes and fittings where gaskets can be used.

Exposures from working with asbestos insulation, removing insulation, installing insulation, fabricating insulation, are well above all current and historic exposure standards.

Mesothelioma is a rare disease that afflicts maybe only three -- two to three to four people per million, who don't have exposure to friable asbestos products like insulation.

You'll hear in this case about Dr. Irving Selikoff who was a pioneer in alerting the world to the potential dangers of working with asbestos products. He, in particular, studied asbestos insulators. He ultimately demonstrated that 9 percent of the insulators who worked with asbestos insulation, died of mesothelioma; 9 percent, versus three to 4 million without exposure to friable asbestos products.

The insulation was so dangerous that it was banned -- spray on insulation banned in 1973, and the pipe covering that you see here was banned in 1975.

Johns-Manville, UNARCO, Owens Corning Fiberglass, Pittsburgh Corning, Armstrong, AC&S, the list goes on, of insulation manufacturers or distributors that were defendants in the asbestos litigation.

Garlock never made asbestos thermal insulation.

Garlock made gaskets where the asbestos was mixed with rubber and pressed into sheets.

In contrast to insulation, this shows Fred Boelter -- who is an expert witness for Garlock that you'll see here either tomorrow or the next day -- working with gaskets is very, very -- are very, very different than working with insulation.

Every reliable study that's been done with respect to asbestos gaskets, shows that the exposures are well below not only the historic standards, but also the current standards, including a very comprehensive systematic study by the United States Navy back in 1978.

This is a list of studies that are published in the literature. On the far right-hand side is the short-term exposure limit that OSHA adopted in 1972. And then the current OSHA short-term exposure limit that was adopted in 1988. Studies by the United States Navy, the first peer-reviewed paper with respect to asbestos gaskets that appeared in the literature was in 1991. Industrial hygiene community just wasn't focused on gaskets. So that's the first paper, one of the few papers that were published that had nothing to do with defendants or plaintiffs in asbestos litigation.

The later studies are by Fred Boelter and Larry Liukonen. Both of them will testify in this case.

Mr. Liukonen published in 2004, but he's also the lead author of the Navy study.

In contrast, these are the insulation studies, or a number of the insulation studies. There's the 10 fiber cc limit from 72 from the prior slide. As you can see the insulation studies far exceed that, and the exposures are tens to hundreds to thousands of times higher than the current exposure limit.

And Dr. Selikoff, who was the leader of alerting the world to the hazards of asbestos, his work, particularly with insulators, led to the creation of OSHA, said in 1978 in a book that he wrote for the purpose of summarizing the literature for lay people and specialists alike, says, high temperature jointing and packing materials, no health hazards in forms used in shipyard applications.

These gaskets that were used in shipyard applications are the same types of gaskets that Garlock sold for use in industry.

Nearly every claimant who worked with a Garlock asbestos gasket or packing, would have had exposure to the friable insulation, because they're working in the same spaces where it is and the pipes and fittings are covered with the insulation where the gaskets and packing are. That insulation exposure explains their disease.

We're not asking the court to decide the merits of

any individual claim, or decide any scientific issues here. We ask only that the court estimate our legal liability. This will involve estimating how many cases would reach a jury under the federal rules of evidence, and for those that do, what is the likelihood of its success.

In an asbestos trial, the plaintiff has the burden of proof and the burden of persuasion on many issues. They have to prove that the product is defective. And in some states they have to prove that the manufacturer knew or should have known about the potential dangers associated with the product.

For this trial we're focused only on one issue, and that's specific causation. That requirement is universal among all states. The plaintiffs must be able to prove, with admissible evidence, that Garlock's products were a substantial cause of the claimant's disease.

Claims should not reach a jury on this issue because the claimants cannot show that the exposure from Garlock's gaskets and packing was significant, compared to the claimant's other exposures.

In the *Moeller* case that Mr. Cassada mentioned a moment ago illustrates this issue. As he quoted the Sixth Circuit. The Court -- as he quoted the Sixth Circuit, the Sixth Circuit said -- this was a case we tried in federal court in Kentucky. Garlock lost at trial but appealed, and

the Sixth Circuit said the case should not have gone to the jury. This is a case -- this was a very typical case, pipefitter case, the type of occupation that has the most contact with asbestos gaskets and packing.

We call the cases and the claims as they are -- as they shouldn't make typical claims like this, they shouldn't make it to the jury, the *Moeller* Filter.

To show you what the typical claims look like against Garlock for estimation purposes, we used the information from the questionnaire process. They yielded a vast amount of information about the evidence the claimants will be able to present about themselves when they ultimately have to prove their claims.

Our experts have done what science does in making determinations about disease causation and predictions about groups of people. They analyze the data, group the population by the relevant characteristics, and then applied the tools of exposure science and industrial hygiene to understand the nature of the exposures -- conducted in exposure assessment, and then applied medical science to evaluate the information.

We've asked John Henshaw, an industrial hygienist to review the data submitted by the current claimants. Mr. Henshaw is a long time leader in the industrial hygiene community, past president of the American Industrial Hygiene Association, and the former head of OSHA.

Mr. Henshaw grouped the likely claimants by the similarity of their contact with gaskets and packing. He divided them into five groups. I've illustrated four groups here.

Group one are those claimants that would have had occupations that had the most contact with gaskets and packing. Those are the pipefitters, the steamfitters, the plumbers, the Navy machinist mate. Those are the primary occupations.

In group two, they don't have quite as much contact with gaskets and packing but it's still part of the regular work they do on a regular basis, boiler workers, shipyard workers, Navy firemen.

Group three has very little contact with gaskets and packing, electricians, machinists, laborers, but they are around the people in the trades that are doing that type of work.

And then group four is more remote, painters, insulators, clerical workers, office workers.

Group five, which is not depicted, are people that wouldn't have any contact at all with gaskets or packing, wouldn't be around people that would do any work with gaskets and packing.

The court may recall from the questionnaire process that the claimants were asked to categorize themselves by

their industry and their occupation. So that led to more than 1,000 combination of industry and occupations.

Group five also includes those individuals where the combinations don't make any sense, like a bricklayer in the Navy.

Mr. Henshaw's grouping of the claimants is definitive. The claimants or the ACC has identified one certified industrial hygienist may testify in this case, his name is John Templin. We asked him specifically about Mr. Henshaw's grouping of the occupations, based upon their contact with gaskets and packing. He said, nothing being left out of them as being nothing wrong.

Mr. Henshaw next evaluated the exposures expected in each group using the principles of industrial hygiene, relying on the information supplied from the questionnaire process, and what the literature reports about the exposures that these individuals would have.

Now the committee's response initially has been that this process is illegitimate, that it isn't science. But as the court is aware, the Federal Judicial's Center manual on scientific evidence has a chapter on Exposure Science. It's written by Dr. Joseph Rodricks, a well-known toxicologist. We've engaged Mr. Rodricks, he reviewed Mr. Henshaw's analysis, and said this is precisely the kind of exposure science and methodology that's contemplated by the guide.

Mr. Henshaw's evaluation of the exposures by group, provides the following data that ties into the *Moeller* issues, the bucket in the ocean. These are example occupations from within each group, the pipefitters from group one, the boiler worker from group two, the electrician from group three, and the painter from group four. The red circles represent an estimate of insulation exposure. The blue dots represent estimates of gaskets and packing exposure.

The standard measure for estimating cumulative exposure is fiber per cc years. You'll hear that when they collect measurements -- when industrial hygienists collect measurements in the workplace of exposure, it's measured in fibers per cc. That's converted -- an eight hour average is determined by an eight hour or long term sample, and that average exposure during the day is regarded as one fiber per cc year. So if someone was exposed to two fibers per cc, as an eight hour time rate average, at the end of one year, 250 workdays, they would have two fiber cc years of cumulative exposure.

Throughout his analysis, Mr. Henshaw made very conservative assumptions or proclaimant assumptions. For example, for the insulation exposure, we know that pipefitters and we know that boiler workers have exposure to insulation that's not related to the work that also involves gaskets and packing. They're bystanders to insulators removing

insulation. They testified about it extensively.

You'll hear about testimony or you'll see testimony where people described how it's a snowstorm when they're around the insulators, and the insulators work right above them and the insulation rains down on top of them. You could see how easily it would be if someone's removing insulation next to you while you're trying to do your work, that you would also be exposed to insulation.

Mr. Henshaw did not include that insulation exposure in his estimates. This is only for the work that goes along with removing and when replacing asbestos gaskets.

For the gasket assumptions, his assumptions are equally conservative. The blue dot represent all the gasket and packing exposure, not just Garlock exposure. There was no effort to try to determine Garlock's market share. But as you'll hear in the Navy, there are many, many manufacturers of asbestos gaskets and packing that were on the qualified products list that could sell. Plaintiffs typically identify two, three, four, five different types of gaskets and packing. Garlock did not control or did not have majority of the market share. In fact, the largest market share belonged to Johns-Manville during the '40s, '50s and '60s. Johns-Manville made basically 60 percent of just about every asbestos product, particularly insulation, but also gaskets and packing. As you can see there's an orders of magnitude

difference. So it's clear -- or it appears obvious that the insulation exposure would explain the claimant's disease.

We then asked Dr. David Weill to review Mr. Henshaw's analysis and explain its medical significance in terms of substantial cause. Dr. Weill is the director of the Center of Advanced Lung Disease at Stanford University Medical Center.

Even in the group one claimants with the most contact with gaskets and packing, Dr. Weill explains that the gasket and packing exposure would not be a significant cause of disease, or would not be a substantial cause of disease.

For the claims in groups two, three and four and five, the claims become even weaker.

None of the claims should make it through the *Moeller* Filter, the bucket in the ocean filter.

And this assumes that each of the fiber types are equally potent and they're not. You've heard about the so called chrysotile defense, or whether chrysotile is a cause of mesothelioma. The vast majority of the gaskets Garlock made were made with chrysotile asbestos. A very small percentage were made with an amphibole asbestos known as crocidolite.

Our doctors will explain the differences between these fiber types. They come from two different families. The serpentine -- asbestos is basically -- is actually a commercial term, it's not necessarily a mineralogical term.

It's a commercial term to describe fibrous minerals rocks that you break them open and there are fibrous minerals inside, that are resistant to fire, heat, acid.

Chrysotile's in the serpentine family. The amphibole family has several members, some were used commercially, some were not. The important commercial ones were amosite and crocidolite. Amosite was frequently used in insulation crocidolite was too.

The vast majority of Garlock's gaskets were made with chrysotile, and that's where the claims against Garlock typically arise.

There's been studies over the years on different cohorts, different factors, different groups of people studied to determine whether they have an increased risk of disease. And in particular, they report the increased risk of disease from mesothelioma.

As you can see, the highest and greatest potential for disease is cigarette factory workers, gas mask factory workers where they were using crocidolite.

Insulators, though, also have a very high risk of mesothelioma. It's identified 10 percent -- or, I'm sorry, 9.4 percent. I believe that's from Dr. Selikoff's study.

But as you move your way down and you start looking at just the chrysotile only studies, there are more than a dozen cohorts of large-scale studies of individuals who worked

factories, in mines, and mills, who had massive exposure to chrysotile, and no increased risk of mesothelioma.

This doesn't include the case controlled studies -- some of the case controlled studies that involve people that work with chrysotile products that would have made this list even longer.

Over the last 10 to 15 years, there's been two major quantitative risk assessments done to try to determine the relative potency of the fiber types.

In 2000, Hodgson and Darnton who worked for the Health and Safety Executive in Great Britain, Great Britain's version of OSHA, estimated that the relative potency of the fiber types was 500 for chrysotile, amosite 100, chrysotile 1.

Berman and Crump working in connection with the EPA, estimated that the exposure was much -- the relative exposure was in the hundreds to even over a thousand times more potent for the amphiboles versus the chrysotile.

Even Dr. Brody, one of the experts that the committee will call in 2006, estimated that the relative potency between amosite and chrysotile was 500 to 1.

As the court has said, we're not asking the court to determine whether chrysotile is a cause of mesothelioma. But relative potency is important, if chrysotile is potent at all.

So Dr. Weill in estimating or analyzing the medical significance of the information that Mr. Henshaw prepared,

factored in potency. And taking in the potency factor for one of the examples of the pipefitter assuming that -- factoring in the amosite components of the insulation, the ocean gets even bigger.

We find it telling that the committee and the FCR have not focused on the actual evidence in this case. The evidence that was submitted by the current claimants.

Their expert, Dr. Brodken, acknowledges that this approach is scientifically valid and can be helpful. We asked him in scientific research in asbestos disease, researchers have looked at various groups of workers and considered them collectively for making decisions, correct?

Certainly.

And in that context, especially, retrospective dose reconstruction is quite helpful; is that correct?

I would agree with that.

But the committee doctors did not use this approach. Instead they've advanced various versions of the every-exposure-contributes theory. For a long time doctors testifying for plaintiffs' lawyers would say that asbestos is a cumulative disease -- a cumulative exposure disease, which is true. But that every exposure contributes to cause it. So any exposure from any product contributes to cause someone's disease, and is therefore a substantial cause.

As courts started rejecting that, that theory got

modified a little bit and a new version emerged, that it was every exposure above background exposure was a contributing cause.

Courts have not rejected that as well. It's rejected in many states. And in those states where they had previously accepted that type of testimony, the courts are starting to reject it; Pennsylvania is one.

Recently the highest court in Pennsylvania said, we do not believe that it is a viable solution to indulge in a fiction that each and every exposure to asbestos, no matter how minimal, in relation to other exposures, implicates a fact issue concerning substantial-factor causation.

That brings us to the second major point of emphasis on our merits case, and that's whether the committee's evidence passes through the *Daubert* filter.

Our focus is on the methodology that the committee's expert followed, not just on their conclusions, and that's the focus of *Daubert*.

Case law has rejected much of the methodology used by the committee's experts, and our experts will explain the science underlying the case law.

For example, the committee's expert's opinions on specific causation rests largely on case reports. Dr. Welch, in fact, uses a single case report of someone who likely worked with an amphibole product as a foundation for a gasket

opinions.

Case reports are not studies with control groups. There's no statistical significance to case reports, they're anecdotes. They're a basis for a hypothesis, but they're not evidence of causation. They raise questions for further study. They don't answer the questions. And the law is clear, that reliance on case reports are not permissible.

This is from a recent decision -- or from a decision in this district. "Case reports are not scientific proof of causation. Case reports fail to test a causal hypothesis, and therefore cannot support a causation opinion."

The committee's experts repeatedly used public health agency findings as evidence of causation as well. They'll cite public health agency statements to support their opinions that chrysotile causation of mesothelioma -- or for chrysotile causation mesothelioma and low dose causation.

But public health agency's policies are based on conservative assumptions, as the Supreme Court said, "risking error on the side of overprotection."

Courts that have looked into this issue have consistently rejected such statements as proof of causation. A regulator's purpose is to suggest or make prophylactic rules governing human exposure, from the preventive perspective, that agencies adopt in order to reduce public exposure to harmful substances. In doing so, the agency's threshold of

proof is reasonably lower than that in tort law.

The committee's experts will also and the committee's lawyers will also speak about how public health agencies have said that there's no safe level of exposure to asbestos. But saying that there's no safe level of exposure to asbestos is based upon risk assessments, extrapolations from high dose studies to low dose exposures, in calculating a risk. Those two have been rejected. That's not -- risk -- estimates of risk are not proof of causation. No safe level addresses risk not cause, and there's a significant distinction between those two concepts.

By offering -- this opinion is just from this year. By offering opinions about risk, none of the plaintiff's other experts have offered an opinion about what level of exposure is sufficient to cause mesothelioma.

As I said earlier, the reliable studies on gaskets and packing show that the exposures are well below, not only the historic exposure limits, but also the current exposure limits.

The committee's case on the fiber release for gaskets is based on and built on the work of Dr. Longo. He's on the right. He's a long-time witness for the plaintiff's bar in asbestos cases. He has -- his results are far higher than anything that's published in the literature.

But because his studies are done solely for the

purpose of litigation, his review of his studies requires -- or -- the law is clear that the courts may impose greater rigor in the analysis of such studies. If a proposed expert is a quintessential expert for hire, then it is well within the trial judge's discretion to apply the *Daubert* factors with greater rigor.

You can see the Navy study's on the left. The Chain (phonetic) paper from 1991 in the middle. There's another paper that appeared in peer-reviewed literature -- but peer reviewed -- by McHenry and Moore (phonetic). The Liukonen/Boelter papers, and then here comes Dr. Longo.

In his earlier studies he was glueing gaskets to a metal plate and calling that a workplace simulation. Glueing it to a metal plate and then scraping and wire brushing and grinding away at the gasket. He drew a lot of criticism for those types of studies saying they're not real workplace simulations. Gaskets go on flanges of one type or another. They're not glued down to a metal plate. And so he found old flanges with old gaskets that have been out of service for many, many years. And most recently in flanges that have been out of service for 19 years, where the gaskets were dry, brittle. It's not even clear that they were compressed, asbestos sheet gaskets, which is what Garlock made and what the claims are against Garlock are based on.

We'll identify for you, Your Honor, many, many

errors that Dr. Longo has followed. We took his deposition in this case. Never before have we had the time to prepare for a deposition with the full seven hours. And we identified on just the full seven hours were about errors in the different studies that he cited to the court that he had conducted.

We won't go through, obviously, all of those studies when he takes -- all those problems when he takes the stand.

But from a big picture standpoint, the first major problem with Dr. Longo's studies are that they're not realistic work practices. The glued gaskets is a good example.

Then when you watch the studies, remember the earlier video when Mr. Boelter was trying to get up underneath the gasket to remove it.

Dr. Longo, and I think this is a video from where he actually supposedly hired a steamfitter to remove these gaskets. For whatever reason this person is chopping away at gaskets. That's not the way the work is done.

Dr. Longo also employees these high speed grinders in his studies, 11,000 RPM grinders. He has no evidence, no record, he admits he has not done any research to determine whether these high speed electric grinders were even available in '40s '50s and '60s. Our research shows that they weren't. But he's using these very high speed grinders and very

aggressive tools to generate the highest exposures.

Remember from his -- the charts of his gasket studies, most recent gasket study bystander exposure was over 70 fibers per cc, almost 80 fibers per cc. That's almost higher than knocking off the insulation that we saw at the very beginning of my opening, knocking off the insulation. It makes no sense.

This is a picture of Dr. Longo. He uses different tools on his grinder. This is one of a brass wire brush. He didn't realize it until we brought it out at his deposition that the maximum safety rating for the very brass wire brush that he used there was 7,000 RPM. He was using it at 11,000. I asked him, well, is that a safety hazard. He said, well, evidently not because no one got hurt. Well, that's not the standard. That's not how you evaluate safety.

But it's an unrealistic work practice to think that workers were using tools like this outside their maximum safety rating.

He had an early problem -- we'll see about this in a second -- about a grinder burning out. He said the problem with the grinder burning out was that the wire brush was too big for the guard, and it kept hitting the guard. And so in the studies he takes the guard off the grinder. That doesn't sound realistic.

You see sparks flying in his videos as if this is

some sort of typical work practice. Certainly those people that worked in chemical plants, refineries, many industrial facilities are not allowed to use electric grinders like this and create this potential explosion or fire hazard.

This is the video, you'll see -- using these aggressive techniques with the steel wire brush. These flange faces typically have phonographic finishes where they have little grooves that grip the gasket when they're tied together. You wouldn't want to use these aggressive tools in order to try to remove gasket material, because you risk damaging the flange face. But of course he's not using these flanges again. He's just trying to using them for his gasket study.

You'll hear about how Dr. Longo did publish a paper in the peer-reviewed literature in 2002. That's true it drew criticism in industrial hygiene literature. We've taken his deposition and we took his colleague's deposition. Dr. Longo testifies regularly. He has a colleague, Mr. Hatfield, who until the past year has testified for 10, 15 years for Dr. Longo's company. He's got other colleagues that testify as well.

But we took Mr. Hatfield's deposition. We identified a number of problems in the quality control procedures for the studies that were published in the industrial hygiene literature. So we asked Mr. Hatfield about

this.

We said, do you have any plans to do another study involving gaskets?

Yes.

Is this to fix the quality control problems with your accounts?

Well, it's for a number of reasons.

Is that one of the reasons?

That is one of the reasons.

So when you hear the committee's lawyers or the experts talk about Dr. Longo's published paper, understand that they had to redo the study, redo the studies, do subsequent studies to fix the quality control problems.

Ultimately what they -- of course every time they drew criticisms and they did another study, the numbers go up.

Reproducibility is an important part of reviewing any part of scientific experiment. Not only does Dr. Longo's studies does not reproduce what's in the scientific literature, but he can't reproduce his own work. They just keep going up.

We're talking about gasket studies and the packing studies where the exposures are measured in 10ths of a fiber per cc, and his are ranging 10, 15, 25, 36, 77 fibers per cc.

Dr. Longo tries to normalize his data or make it look normal by identifying or citing to sampling sheets.

These are actually handwritten sampling sheets that plaintiffs' lawyers have collected over the years and sent him. There's four, five, six of them that he cites to, just basically notes. Not reports where the industrial hygienist says, hey, I've done something important.

What's really telling about that is one of the first ones that he always cites, relates to a sample that was collected at Shell, a Shell refinery, where the purpose of the study says they were trying to simulate the worst case situation, and Dr. Longo's results are higher. Not a lot higher, but they are significantly higher. So he says, well, I have the same thing -- I got the same thing that Shell reported. When Shell was trying to create something that was not a typical work practice, a worst case situation.

But all of the flaws that we identified can't explain this. Before we file for bankruptcy, this was the highest sample that Dr. Longo ever got. You see that the workers are wearing pumps. And those pumps are connected to filters that are in the breathing zone of the worker. That's how the industrial hygienist -- or that's how air samples are collected. They forgot to turn the pumps on when they first started the study and did the work. They're just realizing this now.

The person on the right is Mr. Hatfield. He's going to turn the pumps back on, and then they're going to go on a

rest period for 15 minutes. They're going to stand in the corner and they're going to report 36 fibers per cc, much, much, higher. Remember the standard -- the current standard is one fiber per cc for short-term samples. The historic sample was 10 fibers per cc. They're going to find 36 fibers per cc for standing in the corner of a chamber. We can't explain that.

Dr. Longo also used -- the numbers may not even be that important to him. Well, it's been the feature of the plaintiff's case against Garlock since the late 1990s and throughout the 2000s are Tyndall lighting demonstrations.

This is Dr. Longo on the left removing a gasket having scraped it and now using a wire brush, and they generate what appears to be dust particles in the air. What's happened is, they've turned the lights off in their chamber and they shine a bright light through the breathing zone of the worker. This creates what he calls the Tyndall effect. And it looks scary.

Garlock cites to these studies that shows the exposures from working with gaskets is very low, and then Dr. Longo shows these videotapes and the plaintiffs' lawyer says that Garlock says that this is a safe activity.

We'll show you evidence that you cannot tell whether there's respirable asbestos fibers in the air during this activity. But what's important here, is the person on the

right is wire brushing a flange without a gasket. Just the activity of wire brushing creates dust under the Tyndall light. In ambient light you can't see it, it's not like insulation is pouring out. You can't see it under ambient lights. But under the Tyndall lights everything looks dusty. You set in a movie theater and seen the projector, the ribbon of light that hits the screen, you see the dust in the air, that's the Tyndall effect.

So when they talk about Tyndall lighting, if they show you Tyndall lighting videos, understand that everything looks dusty and dangerous under Tyndall lights.

I would like to wrap up by introducing you to the witnesses that we're going to call.

Dr. Wasson is on the left, he's the first witness. He started out in the boiler rooms of an aircraft carrier in 1961 as a young boiler officer. He progressed through the ranks, ultimately became a captain. But he spent a lot of time in boilers and firerooms on ships. He knows how asbestos gaskets and packing were used in the real world, and he knows how insulation was used. And he'll be our first witness that we call after lunch.

Dr. Garabrant is our first witness, scientific witness that we'll call. He's an epidemiologist, Professor Emeritus from the University of Michigan, School of Public Health. He'll explain based upon -- explain what epidemiology

is. Why it's important. Why it's a necessary component to understanding disease causation and making predictions about increased risk of disease. And he'll identify for us and walk through the different occupations that are at increased risk, and what is the nature of that work.

And we'll find, ultimately, I believe, that those occupations that are at risk for disease from mesothelioma, all have significant asbestos insulation exposures.

Our industrial hygiene experts consist of Larry Liukonen and Dr. Still. They were two of the three authors of the Navy study back in 1978. Mr. Liukonen went on to work for the railroad and in private consulting, and is published in the peer-reviewed literature on asbestos gaskets.

Fred Boelter is another -- Dr. Still went on to have a very distinguished career in the Navy. He became a captain, was in command of the Navy's toxicology laboratory.

Fred Boelter started out working for OSHA, as a OSHA inspector. Went into private consulting. He's done a number of gasket studies that have been published in the peer-reviewed literature, at least two articles. But we also asked him to do the assessment that you'll hear about on insulations exposures.

What you'll find or what you'll hear, is that there was not -- the insulation exposures that were in the literature, involved -- typically involved work practices

involving lots of insulation. At one particular time there wasn't specific data in the literature on what is the exposure someone has when they remove just enough insulation to replace a gasket. That's what Mr. Boelter studied. That was the video that you saw at the beginning of our opening, and he'll come and testify about that.

And John Henshaw was the former head of OSHA. He did the analysis of the questionnaires.

Dr. Sporn is a Duke professor of pathology, associate professor of pathology at Duke. His laboratory has been a pioneer in looking at the lung tissues of individuals with mesothelioma. And he'll be able to share with you what they found in looking at those lung tissues, in particular, what is the fiber type of asbestos that they found.

Dr. David Weill, reviewed and determined the medical significance of the information that Mr. Henshaw analyzed.

We'll also call three witnesses that are very specific to *Daubert* issues. Dr. Hesselink will testify about the work he's done to look at this issue of what Dr. Longo says you can see when you're looking at work activities under Tyndall lighting.

I should say that Tyndall lighting is an important issue. Evidently it was very -- it was persuasive to Judge Fitzgerald in the *Bondex* decision. She cited it in her order. But she cited it saying that just from looking at the video,

it looks like there's a large quantity of asbestos that even bystanders would be exposed to.

In fact, Dr. Longo says, but it's hard to not to believe your eyes. Dr. Longo says, well, you can't quantify the exposure to asbestos from watching Tyndall lighting. You. Absolutely can't. Because what Dr. Hesselink has demonstrated and will share with the court, is that you cannot see respirable asbestos fibers under the Tyndall light. They're microscopic and you need a microscope to see microscopic particles.

Dr. Anderson was the founder, and I believe the first director of the EPA's assessment group. The risk assessment group at EPA that did the first risk assessment on asbestos. She'll explain the proper use of public health agency statements that underlie the decisions that say you can't use public health agency's statements for causation.

Dr. Weed, former chief of preventive oncology at the National Cancer Institute. He's an epidemiologist who's published widely on the methods of determining causation. He'll talk about the committee's experts' methodology as to whether they've followed proper scientific methodology in reaching their conclusions about either chrysotile or low-dose causation.

Your Honor, we look forward to bringing our case to you. Thank you.

THE COURT: Thank you.

MR. CASSADA: Your Honor, I'm back to forecast for you the evidence that you'll hear on our economic approach estimating liability.

Your Honor, our approach to estimating the number and the amount of valid claims follows the approach that courts take in adjudicating disputed claims pursuant to our adversary system for resolution of disputes. This is precisely what the code requires.

Applying state law and taking into account relative evidence, we estimate the amount of probable damages that would be assessed against Garlock, discounted by the likelihood of success. Our merits-based approach thus has two variabilities.

First, we estimate the compensatory award share that Garlock might face in cases against it -- in the typical case against it. And we estimate the liability of plaintiff's success. We use those two numbers to estimate what liability Garlock might face.

Now we should note, this is not a novel approach, just the opposite. It focuses on the core legal elements of liability, plus relevant evidence.

What is novel is what the committee and the futures representative propose to do, which is depart from the rule of law and equate liability with settlement. They urge this approach based on their theory that merit is somehow baked

into settlements. I'll show later that this is simply not true. But in any event, their approach would never happen in state or federal court or any court of law.

Now from court ordered discovery, we have had access to extensive evidence. In fact, you'll hear that Bates White has constructed the most extensive database in the history of asbestos litigation. Bates White has used all of the data it's collected. In the database and all the evidence gathered therein, it reveals the truth about Garlock's responsibility. And that truth is completely consistent with what you've heard from Mr. Harris about the science.

Garlock's claimants had massive exposures to other asbestos products, even though those exposures didn't always appear in the cases against Garlock.

In fact, those exposures included exposures to many different products by companies that made amphibole asbestos insulation.

The data says that typical claimant against Garlock has exposures -- identified exposures to at least 36 other products produced by other companies.

In the science that you heard Mr. Harris describe, shows what this means in comparative terms, that Garlock really is a bucket in the ocean in virtually every case when you consider the number and sources of other exposures.

Now this affects both variables in the estimation

process. It affects compensatory award share, because in asbestos litigation, the verdicts that plaintiffs get, will be shared among all responsible parties. It also affects the likelihood of plaintiff's success.

You'll hear about Garlock's defense in asbestos cases, and that defense focused on showing that under science Garlock's products simply did not release enough asbestos to cause disease, and comparing that with the exposures that folks -- workers who actually came into contact with Garlock's gaskets, what the exposure they suffered from asbestos insulation. That was a very effective defense.

And we'll show you that when all of the evidence was in the courtroom, that Garlock won virtually every case. In fact, Garlock won 92 percent of the cases that went to verdict. So the -- when all of the evidence is available, the plaintiff's likelihood of success is no greater than 8 percent.

Now in applying our merits-based approach, we asked Dr. Bates to make three simple assumptions. First, we asked him to assume that all claimants who allege contact with Garlock's asbestos-containing products, proceed to trial in final judgment.

And second, that courts do not exclude claimant's causation evidence under *Daubert* or other rules of evidence.

Now you just heard the science, and you know those

two assumptions are completely appropriate, because they're actually against Garlock's interest. We think that when the proper rules are applied, very few cases would ever actually make it to a jury against Garlock.

The last assumption we asked Dr. Bates to make, is that courts and juries have access to all of the information that plaintiffs or their counsel either have or can reasonably obtain regarding plaintiff's exposures.

Now this too is an eminently reasonable assumption. It simply mirrors the discovery obligations imposed on parties and their lawyers on the rules of procedure.

Now it also happens to reflect the situation in this estimation case. We've gathered actual evidence in our case about what claimants and their lawyers will eventually say about what caused claimant's diseases. From that evidence we know that claimants will eventually identify 36 separate causes for their diseases; 22 of these will be products that are now part of the trust compensation system; 14 will be defendants in the court system.

That's not surprising at all, because the companies that produced the most dangerous products and who really produced all the insulation products, they filed for bankruptcy in the early 2000s, and they've established trusts to assume their liability.

Now our estimation approach is a merits-based

approach. So as a starting point, Dr. Bates had to consider how juries or how courts would allocate -- that is to Garlock -- under the different state apportionment regimes.

So we surveyed every state in the country. We divided the different allocation rules into three different categories. First, pure joint and several liability states. Second, pure several liability states. And finally, there are several states that adopt hybrid rules. You'll see on the map we have here that we divided those up into three categories. Most of them are pure several liability states. In actuality, some of those states do apply hybrid rule. But we think for all effective purposes in our case, those rules don't apply.

For example, Texas. The rule in Texas is that parties are only liable for their several share of a plaintiff's damages as determined by jury. But if a jury's determined that a party's at least 50 percent liable, then that party may have joint and several liability of the whole thing.

Given that Garlock in a typical case would be one of 36 separate causes, those rules have never applied.

Dr. Bates then divided the different claimant groups, both pending claims and future claims between the three different liability regimes.

The next step was to estimate what the typical plaintiff would receive in terms of a verdict. And to

estimate verdicts, Dr. Bates looked at databases that have all the reported verdicts, at least in the literature, and mesothelioma cases. He also looked at verdicts from other databases and other tort context, other wrongful death and personal injury verdicts. He considered all of those. And he will tell you about what conclusions he reached about estimating the verdict.

Under Dr. Bates' estimation model, verdict amount can vary by state and claimant personal characteristics. Dr. Bates in his approach takes those into account.

So we first focus on the analysis and pure joint and several liability states.

Now as the court knows, the liability of reorganized companies and companies in tort, are treated -- in the tort system are treated differently under pure joint and several liability. Trust payments come off of the top of the verdict. Once the trust payments come of the top of the verdict, the remainder would be allocated among 14 different tort defendants.

So Dr. Bates estimated what Garlock's share would be of the remainder of verdicts in joint and several states after application of trust payment.

Now note here that there's a very -- there's another very claimant friendly assumption in Dr. Bates' approach, and that is that the remaining share of a verdict after

application of trust payments, would be allocated to Garlock on a pro rata basis.

So the way that the allocations are actually made in many states, is that a jury determines defendant's various shares and will allocate them in accordance with what the jury determines is the fault of each defendant.

Our assumption is that everyone gets treated the same, which again is a very friendly assumption, given the low -- we think -- medically insignificant dose that plaintiffs can get from a Garlock gasket.

Dr. Bates then focused on pure several law states. Of course in those states the estimated verdict would be sliced 36 different ways. The trust and the tort defendants are treated the same. So Garlock would bear 1/36th of a verdict in these states.

And finally there's several states that follow hybrid rules, and Dr. Bates treated those states differently. Now in these states, California, Texas to name a couple, Courts -- the state law treats economic damages and non-economic damages different.

Economic damages are often apportioned in accordance with pure joint and several liability rules. Non-economic damages, pursuant to several liability rules.

So in these states, Dr. Bates first had to estimate how damages would be allocated between the economic and

non-economic for each verdict.

Then for the economic damages, he applied the approach I described earlier. For pure joint and several liability states, deducting the trust settlements first, at least the trust settlements that would be allocated to economic damages, and allocating the remainder 14 different ways. Then of course for non-economic damages, Dr. Bates allocated 1/36th of those damages to Garlock.

Having determined or estimated Garlock's potential share of damages and claims, Dr. Bates then discounted those by the plaintiff's likelihood of success. And for this, Dr. Bates determined the likelihood of success was no greater than 8 percent. In fact, he concluded the likelihood of success was less than 8 percent.

And there are a number -- you'll hear there are a number of basis for this conclusion. You've heard the science -- you'll hear the science evidence that supports that conclusion. You'll also learn that Garlock, more than most defendants, tried its share of cases, tried its share of mesothelioma and other cases.

And during the time period when Garlock had all of the evidence on the table -- as I said earlier, Garlock was extraordinarily successful and won most of the cases that it took all the way to trial. So 8 percent is an appropriate estimate for likelihood of success.

And Dr. Bates used econometric principles to actually test that likelihood of success, and determined that if you applied likelihood of success to all claims, that it would actually be much lower than 8 percent.

So having discounted the estimated share of judgments, Dr. Bates multiplied those by the number pending claimants who actually alleged contact with Garlock products. And the result was that Dr. Bates estimates that Garlock's actual legal liability for clients would be -- for pending claims, would be less than $25 million.

For future claims Dr. Bates followed the same procedure, only he estimated that the future claims by reference to an incidence model which predicted disease for workers who would have worked with Garlock's gaskets. And he estimated based on Mr. Henshaw's different exposure groups that you heard about from Mr. Harris. The number of claimants within those occupations who would actually come into contact with a Garlock gasket.

And applying a formula to the projected future claims, Dr. Bates estimates that Garlock's actual legal liability would be no greater than $100 million, and therefore the total liability that Garlock, under the Bates analysis, would be that Garlock's liability for claims would be no greater than $125 million.

As the court knows, Garlock has proposed a plan that

would provide funding -- total funding of $270 million on a net present value basis. You'll hear from Dr. Bates about that plan, and how based on Garlock's actual legal liability and the provisions of the plan, that $270 million is more than sufficient to pay all claims.

So that's the approach. It's based on a reliable scientific method. It's based on merit. Based on evidence. And the result is actually what you would expect for a company that produced products that were used in environments where plaintiffs would have experienced massive other exposures and particularly gaskets.

So I now turn to the evidence that we'll offer in rebuttal to the settlement approaches that you'll hear from the experts for the committee and futures representative.

Now the first noteworthy thing is, they are not estimating the same thing as Dr. Bates. They're estimating what Garlock's future settlements would be. In fact, to be more precise, they're ignoring that the bankruptcy case was ever filed, and they're forecasting settlements in a counter-factual world in which Garlock had never filed for bankruptcy.

Dr. Peterson opines that Garlock's future settlements would be approximately $1.3 billion. Dr. Rabinovitz estimates that Garlock's future settlements would be $960 million. Now these are astonishing numbers when

you consider Garlock's actual history of settling claims. As we'll hear, they both use the same so called calibration period.

We'll offer a lot of evidence about the many things that are wrong with their opinions. They do not use a reliable methodology. We filed a motion to exclude their opinions based on *Daubert*. We understand the court will take those under advisement. They make many fundamental data mistakes. In fact they ignore actual data that we collected during the course of the case.

For purposes of the next few minutes that I'll be talking about this, I'm only going to focus on two foundational problems that you'll learn about.

First, Dr. Peterson and Dr. Rabinovitz, they assume that settlements reflect liability. This contradicts the fundamental tenants of economics that explain why Garlock's settlements in fact were several times higher than its legal liability.

Second, they ignore that settlements during their calibration period are particularly inappropriate in its proxy's for liability, because they're inflated by a desire to avoid escalating high cost of trying cases and incomplete factual records, in many cases resulting from evidence suppression.

I should begin, Your Honor, by explaining that there

is a difference recognized in the law and economics literature between liability and settlements.

In fact, this is a formula that first appeared in a famous article, at least famous in some circles, by Richard Posner, where he highlights the difference between settlements and liability. Judge Posner said -- is saying, basically, parties settle cases for reasons other than liability. And you'll see under the formula you'll recognize the first part of it, and that's a debtor's expected liability. That's precisely the formula that we're using in our direct approach to estimating liability. But defense cost and other cost affect settlements greatly.

In fact, Dr. Posner or Judge Posner concluded in his article that under the economics of settlement, a defendant will rationally pay or offer as its maximum offer, its expected liability, plus the defense costs that it can avoid by going to trial.

Now this does not sound like a very profound conclusion to any lawyer that's ever settled a case. We all know that when we settle cases, we consider the cost of going to trial.

In fact, this formula and the intuitive judgment they reflect, is precisely why we have rules that say settlements are not admissible in a court of law to establish the validity or amount of claims. It is one of the reasons we

have this rule. Because implicit in the rule is what everyone knows, and that's settlements do not reflect liability.

Now this chart depicts or actually shows the information about the average amount that Garlock paid to resolve mesothelioma claims during the 20 years preceding its bankruptcy case.

Now I should add the amount you see here is the average amount that Garlock paid to settle cases where it actually made payments. There were a number of cases, a large number of cases were dismissed or resolved without any payment at all.

Now what Doctors Rabinovitz and Peterson say, is that in order to estimate Garlock's liability, we got to look at these years, these four or five years right before Garlock's bankruptcy case.

And why are we looking at those years? Simply because those are the years closest to the bankruptcy case. I haven't heard any other reason they do that.

No analysis regarding why these settlements were the amount that they were, or why it would be reasonable to conclude that those settlements reflect the world that Garlock would be resolving claims in into the future.

Now there is a science that predicts human future economic behavior; that science is econometrics. That's the science that Dr. Bates is applying in our merits-based

approach. But it can also be applied to predict future settlements. And in fact, Dr. Bates did apply that type of approach when he was estimating Garlock's liability for financial statement purposes.

But as I said, you're measuring two different things. And you would naturally expect an estimation of liability in a mass tort case where defendants face very large cost of defense and management of the litigation that they hope to avoid. The cost of settlement is going to exceed the cost of liability.

Now, an econometrician before picking a so called calibration period, will look at the entire history of Garlock's settlements. And the first thing you would note is that there's a huge difference between Garlock -- what Garlock was paying in the 1990s, and what Garlock paid in the 2000s.

So the first we should ask is, what are the factors that drive those differences? What are the influences that people -- that drove settlements in 1990s? What are they in the 2000s? What changed? Can we expect that change to be a permanent change, or was that a temporary change?

That's the analysis that Doctors Peterson and Rabinovitz should have followed in rendering their opinions, and the evidence will show that they did not. And that's one of the things we will focus on during our rebuttal of our case.

So what you'll hear and what you've already heard is that beginning in 2000, and extending through 2001, there was a bankruptcy wave. We didn't create the term "bankruptcy wave". In fact, the first place I saw it was from an expert report provided by the committee's expert, Dr. Peterson. That that bankruptcy wave took the nine top tier defendants that you see listed here out of the tort system into bankruptcy. Of course these were the biggest companies out there, and they were paying most of the liability.

They were -- just about all were thermal insulation companies. These are the companies described by Mr. Harris when he was showing you the video. These are companies that made highly friable amphibole insulation products. Now there are a couple that didn't, USG produced, principally, a joint compound that was used in filling seams in wallboard. But that was a highly friable product, and they became a popular target for plaintiffs.

But most of these cases -- most of these companies produced the really dangerous amphibole insulation products that Dr. Selikoff opined were the causes of mesothelioma. These companies that were paying the most money, they were paying the most clients, they went into bankruptcy.

You'll see that when they went into bankruptcy, a whole host of companies were swept up with them.

Now their bankruptcies were caused by an avalanche

of non-malignant claims brought by people who were not sick. We know now that the vast majority of non-malignant claims were manufactured by plaintiffs' firms and complicit doctors that everyone now understands were fraudulent.

In the words of Judge Janice Jack, the diagnosis for these claims were "driven by neither health nor justice, but were manufactured by money".

So it was that phenomenon that took most of the compensation for asbestos claims out of the tort system. As you've heard, Garlock itself is victimized by the fraudulent medical screens. Garlock paid almost $1 billion to resolve several hundred thousands of these claims, a few hundred dollars at a time, several hundred thousand dollars, little cuts at a time that eventually amounted to almost $1 billion. That's where a lot of Garlock's compensation -- or a lot of the money that Garlock paid in compensation claims went before this bankruptcy case.

Now this bankruptcy wave, it describes -- or it provides the reason that Garlock's settlements went up during the 2000s. In fact, there's no serious dispute about the root cause of Garlock's products, the disappearance of the thermal insulation companies. Without these companies, as you've heard, plaintiffs' firms targeted Garlock and other low-dose producers for trial. They demanded that they, "pick up the share of payments lost to the bankruptcy wave."

Now the immediate impact of this is that it increased Garlock's overall cost to defend cases. Garlock was forced to either try more cases or pay higher settlements. Now Garlock rationally paid more to settle claims, because the escalating defense cost which could be avoided, increased the benefits of settlement, even at the higher values.

Now, there was also an increase in the actual costs of trying individual claims. As you'll see here, this is data from selected claims that were tried during the earlier period, the 1990s and the later period. And you'll see the gargantuan increase in the amount to actually try a case. This makes clear that these incentives that Garlock had for paying more to settle claims.

Now the evidence will show that there was an additional impact of bankruptcy wave, a very disturbing consequence of the wave. That as evidence of thermal insulation exposure decreased, and even disappeared in some cases, many of the plaintiffs' lawyers say now that they "improved their cases against Garlock". But they did so because their clients no longer acknowledged exposures to thermal insulation made by companies that went into bankruptcy.

Now the Baron and Budd memo from 1998 shows that plaintiffs recognized early on how they could increase or maximize their claim values, simply by not admitting to

evidence of alternative exposures. And you'll see here, this is the Baron and Budd memo. This was a memo that was uncovered in the late 1990s, just before the bankruptcy wave that I described.

The memo is quite illuminating and actually confirmed what many defendants expected, because there was a bankruptcy effect before that, it was even before the bankruptcy wave, when some defendants, very prominent defendants introduced products that most plaintiffs would have been exposed to when they disappeared, there was the bankruptcy effect, the evidence disappeared in the tort system. This memo explains why. This is a witness preparation memo.

First, it's noteworthy here that in the late '90s, that the Baron and Budd firm identified Garlock as someone that plaintiffs could remember. Garlock made gaskets. And the plaintiffs are admonished to be sure you know the names of all the products listed on the worksheet. Garlock made gaskets.

But the memo also instructed witnesses what testimony would maximize the value of their claims. Do not mention product names that are not listed on your work-product sheet. Defense attorneys will jump at the chance to claim asbestos exposure on companies that were not sued in your case. So it's important that you name the right companies and

you don't name the other companies, because that would affect your claim and you would be unable to "maximize the value of your claim".

Now we'll offer the Baron and Budd memo into evidence, and you'll hear testimony about that. But there's another part of it that's interesting and noteworthy there, and that is that the memo itself shows that plaintiff's lawyers appreciated that they controlled the evidence of exposure. They say at one point that you're going to be sitting across the table from a defense lawyer, but don't worry, they are very young. There's not a thing they can do to refute what you say about what your exposures were in your deposition. In fact, they say, they weren't there. There's not a thing they can do about it. So don't worry about being contradicted.

Now let's go back to the -- Judge Posner's formula. With increasing defense costs that Garlock faced, you would expect that the value of a settlement to Garlock would be greater, and so that the cost of settling claims would increase, purely from an increase in Garlock's defense costs that could be avoided by going to trial.

Judge Posner's formula, in fact, explains why a company that expects its liability to be zero, might still pay a lot of money to avoid having to take a case to trial.

But suppression of evidence has an entirely

different and more impactful effect. In fact, when you suppress evidence, it affects all three variables; compensatory award share.

Remember how we divided up liability under the different states. If you can make culpable parties disappear, that means that the companies that you're targeting will pay more, and therefore you drive up their expected liability.

Likelihood of plaintiff's success. Now remember that Garlock's defenses were very powerful when they could point to the amphibole insulation. And when they could point to the amphibole insulation, juries understood. That's why Garlock had a high success rate. Juries understood that any exposure to Garlock gasket was a bucket in the ocean.

But, if Garlock doesn't have the evidence, the ocean becomes a bathtub. So now Garlock is a bucket in a bathtub. And Garlock, although it still won the majority of cases its cases, its defense became marginally less effective.

And defense costs, the slide that I showed you earlier of those huge defense cases, those were in cases where Garlock faced the disappearing evidence phenomenon. Because when the plaintiffs weren't admitting that they were exposed to these products, then Garlock had to hire experts and try to take advantage of other rules of discovery to fill in the missing evidence.

And you'll hear during the course of the trial that

Garlock would hire someone who would be an expert on products used in the Navy, and put those on and the plaintiff's lawyers attacked them saying, well, maybe the products were there, but you can't show that my client actually was exposed -- used or worked around those products. Those experts obviously weren't there and they have to admit that.

So in any event, when evidence is suppressed, all three of the factors increased, and the maximum offer that a defendant will rationally make will increase along with it.

Now we submit that the evidence will show that these are the factors that drove Garlock's settlements on mesothelioma claims from a few thousand dollars a claim in 1990s, to tens of thousands of dollars later during the 2000s.

Now Garlock rationally believed that the reorganization of the thermal insulation companies, and the creation of the wealth and trust system to pay claims would provide at least some relief from the disappearing evidence.

It was rational to conclude that once the money was put in the trust and became available, the evidence would follow the money.

If you look at the bankruptcy cases and the trust distribution procedures in order to collect from a trust, the plaintiff has to show meaningful and credible exposure to the trust product. And surely one would expect that that evidence would be available to defendants in tort system.

We see this in Garlock's financial reporting, beginning in -- in EnPro's financial reporting beginning in 2004. That this was an expectation of EnPro and it was an expectation of other defendants. And even Dr. Rabinovitz, the claims expert that Mr. Grier has hired to put on evidence in this trial.

She opined in an opinion she offered in the ASARCO case, that the recent availability of $30 billion in new asbestos trust assets, would now place considerable downward pressure on indemnity values. Judge Posner's model shows exactly why that statement is true. This was an opinion that Dr. Rabinovitz gave when hired by attorneys who represented the debtor. This was her opinion in that case.

Now what we know now what Dr. Bates will tell you is Garlock did get some relief from the trust. However, in many cases, plaintiffs' lawyers and plaintiffs continued to press Garlock, target Garlock in implausible ways, continued to insist that they had no evidence of exposure to products for which trust would be responsible.

Now these stories were implausible, but for reasons I've explained, they were difficult or impossible for Garlock to completely and effectively address, until Garlock could get the actual evidence, which in many cases is controlled by the plaintiff. These practices continue to impose trial risk on Garlock and continue to impose increasing defense cost.

Now during the course of this case, actually -- this, Your Honor, might be the point where we should close the courtroom, because I'm going to talk about evidence that parties have deemed to be confidential.

THE COURT: It seems to me I've seen and heard a lot of this already. Since this is just the opening, why don't we just skip this now. I think I know where you're going with it. I'm going to hear it later, but as evidence. And we're already running a little late. Why don't we just do it that way?

MR. CASSADA: Okay. May I confer, Your Honor, for a moment?

THE COURT: Yes.

(Pause.)

MR. CASSADA: Your Honor, I'll proceed however the court wants me to. There was some video testimony that I was going to offer that Your Honor has not seen before, that doesn't go just to the facts of the case, but it shows that these practices that we're complaining about are indeed -- or the conduct we are complaining about, are indeed practices that Garlock would have faced in a systematic way. So we can show that --

THE COURT: All right. I'll let you try the case the way you want to.

So we'll ask that at this time, ask those who have

not signed a confidentiality agreement to leave the courtroom.

MR. SWETT: Your Honor, is this an appropriate time for a morning break?

THE COURT: I'll ask the staff, are you all ready for a break?

Let's -- why don't we take a 10-minute break until 11:15. Come back at 11:15 a.m.

(A brief recess was taken in the proceedings.)

MR. SWETT: Your Honor, there may be people in the courtroom who were not present when you gave the instruction for what is coming so I would ask you to repeat the instruction.

THE COURT: Anybody here who has not signed a confidentiality agreement should leave now for the rest of this presentation. And then when we get through this part of it, you all will be welcomed back. Okay.

MR. CASSADA: Thank you, Your Honor. I won't be much longer.

As Your Honor knows, you did grant Garlock discovery, full discovery, 15 cases. We asked for more than this, but this is what we got. We believe that the evidence that we got, the testimony from the law firms was more than sufficient to show that we're talking about conduct here that profoundly effected Garlock and its settlement values and defense costs. And that was part of a systematic -- part of

systematic suppression of evidence.

Now what we found was a pattern that repeated itself. The late filing trust claims, deny exposures to trust products, put the screws to Garlock to maximize the claim value, reach a settlement, file the trust claim based on undisclosed exposure.

So we had 15 cases. In those cases we discovered that there were 21 assertions of exposures to products of bankrupt entities; 21 average assertions per claimant; 19 were not disclosed; two were disclosed. And the 19 that were not disclosed, were included generally, the trust that covered amphibole asbestos insulation.

And we look at specific cases that show the practice. I'll start with the *Golini* case, which was a case brought against Garlock by the Shein law firm. This is the Shein Law Center which files and pursues claims for its clients in the Philadelphia courts.

I'm going to play for the court, the testimony of Benjamin Shein, principal lawyer who asserted claims against Garlock.

Before I do that, I need to briefly set the scene for you. This is a case -- and we've learned that this is typical in cases, where the first thing the law firm did when its client came into the door was to identify the trust claims.

In fact, we know that in an initial meeting, someone sat down, a lawyer, with Mr. Golini, and interviewed him. The result of that meeting was that the Shein firm drafted 14 affidavits that would be used to support trust claims. These 14 affidavits attested to regular frequent proximate exposure to 14 different products, including many companies that produced amphibole insulation, many amphibole insulation products. After the affidavits were executed, the firm sued Garlock, and during the course of pretrial discovery, never identified the exposures, even though there were interrogatory answers that would require that the be specifically identified. And even though Mr. Golini was asked about many of these products and his exposure in general in his deposition.

Now the question came up in the law firm as to why the firm didn't handle discovery differently. Why didn't they identify the trust discovery. We asked Mr. Shein whether the lawyer who interviewed Mr. Golini and drafted the affidavit had communicated to a lawyer who appeared and presented Mr. Golini for his deposition.

And this is Mr. Shein's answer to that question.

(Video playing.)

MR. CASSADA: So Mr. Shein's testimony was emblematic of what we hear a lot of, and that is that somehow plaintiffs are not obligated to share information about their

exposure to bankrupt companies, because that would be "doing the defendant's job" and that they needed to follow the path that they did in order to maximize their client's recovery.

The next case that I would focus on is the *Homa* case. It was a case that was actually tried by Garlock in 2009 in the New York State Supreme Court in New York City. The case actually proceeded through almost three weeks of trial, with Garlock focusing on trying to prove Mr. Homa's exposure to amphibole insulation evidence.

Now in this case, Mr. Homa and his lawyers disclosed three bankruptcy exposures, but would eventually file trust claims and make assertions about a total of 26 exposures that were not disclosed.

Now this case, just like the *Golini* case, is one where the client came in the door and the first thing they did was identify what trust claims the client had. In fact, the David firm -- this was the David firm's client. They interviewed the client. They were ready to file trust claims. They referred the case to the New York firm Belluck and Fox.

Now this firm was under a court order to file and disclose all trust claims that the plaintiff intended to file at least 90 days prior to trial. When the 90-day period came, the firm Belluck and Fox told Garlock's lawyer there were no claims to disclose. But in fact, the David firm had previously already filed one claim, and would eventually file

21 more. The firm filed eight claims the day after the case was settled. In fact, the case was tried for about 14 days, settlement was announced, and within 24 hours, the next day the David firm filed 21 claims.

And we asked Mr. Belluck whether this was a coordinated practice or whether it was just coincidence. And this is what Mr. Belluck had to say.

(Video playing.)

MR. CASSADA: He doesn't know whether it's coincidence.

And we actually had the okay to depose Steven Cooper who was the principal at the David firm who was handling Mr. Homa's trust fund.

(Video playing.)

MR. CASSADA: So in that case, Your Honor, they knew about the trust claims and exposed supporting them. They had the trust claims ready to file. They were under court order obligation to disclose them and produce them at least 90 days before trial, and that did not happen because Belluck and Fox firm instructed the David firm not to file trust claim.

The final case, Your Honor, we'll look at is the *Torres* case. This was a actually a judgment entered after a trial in Texas, shortly before Garlock filed bankruptcy petition.

In fact, Your Honor, this is the single -- the

largest judgment that Garlock suffered in the last -- in the five years proceeding its bankruptcy case. In fact it only suffered one other judgment, that was the *Simpson* case in New York where Garlock was able to obtain the information about the claimants' exposure to bankrupts, if among the verdict form that Garlock was assessed some two, two and a half percent of liability.

But in the *Torres* case, Garlock was assessed 40 or 45 percent of the liability.

Now the Williams Kherkher firm, you heard a lot about them. They developed a special practice of filing about one claim a year for clients who had testified that their only exposure was to Garlock's gasket. Maybe they would have one other exposure. But they would focus on Garlock's crocidolite's gasket, and they would specifically deny exposure to trust products and specifically to amphibole insulation. They would go on to file several undisclosed trust funds.

And in this particular case, they filed a claim for the client based on exposure to Babcock and Wilcox's boilers. And they did it one day before the client's deposition. The next day the client appeared for deposition and testified that he had never heard of Babcock and Wilcox.

Now the same client would go on to file a claim against Owens Corning Trust for exposure to Kaylo, an

infamous, very dangerous amphibole insulation product, after taking the position and arguing to the jury that he was not exposed to Kaylo. And the firm represented on a claim form that the client worked with raw asbestos, another exposure not identified in the case against Garlock.

But when we asked Mr. Chandler about the Babcock and Wilcox claim, he made a point that you'll hear often, this is a common defense that plaintiffs firms use when it's discovered that they haven't disclosed a trust fund, that is, it's not a real claim, it's a quote, deferral claim.

Now the claim would eventually be allowed and paid by the Babcock and Wilcox trust. So in this case they're saying it wasn't a real claim when it was filed, it somehow became a real claim later, and that's when Mr. Torres got paid.

But this is what Mr. Chandler had to say about the Babcock and Wilcox claim, and also the response from his partner, Mr. Finley, who actually had responsibility for filing that claim.

(Video playing.)

MR. CASSADA: It was actually Mr. Finley who filed the Babcock and Wilcox claim.

Now, the firms say there's nothing wrong with delaying a trust fund. After all, the plaintiff is the master of his complaint, and can file the trust claim when they want.

But that's not our complaint. We're not complaining about delaying the trust claim.

What the plaintiff is obligated to do is disclose the product exposures that support the trust claim. And that's -- that doesn't happen. Firms will file trust claims, citing exposure to the products, and they'll delay doing so. But all of the law firms were clear that these were practices that they followed, and that they were done specifically to maximize the claim against Garlock.

This is Peter Kraus admitting it's the regular practice of lawyers in Kraus in certain cases in several law states, not to file trust claims in order to avoid an argument by the defendant that the trust should actually go on a verdict form.

(Video playing.)

MR. CASSADA: Mr. Shein explained that this was indeed the practice of the Shein Law Center.

(Video playing.)

MR. CASSADA: Your Honor, Garlock has not been isolated and singled out for this practices. Courts across the country occasionally in rare cases will discover that claimants in fact have not disclosed trust claims. In many cases these -- this discovery is made on the eve of trial, and sometimes actually during the trial. And we hear -- these courts heard the same kind of excuses about why trust claims

weren't disclosed, or why exposures weren't disclosed, that we expect you'll hear in the next few weeks.

And you'll see, you'll hear evidence on this, but these courts have not met these arguments with great favor. In fact, Judge Peggy Ableman was, until recently, the MDL judge in the Delaware Superior Court. She supervised all asbestos litigation in Delaware. She noted and found from time to time that plaintiffs' firms were engaging in these practices. And she said in the *Montgomery* case, she said that this is dishonest. It's attempting to defraud. I don't like it. And she said it happens a lot in asbestos litigation.

She recently testified in Congress in support of a bill that's been offered promoting trust transparency. She testified what is most significant is the fact that the very foundation and integrity of the judicial process is compromised by the withholding of information that is critical to the ultimate goal of all litigation, a search for and discovery of the truth.

Your Honor, Judge Ableman describes the environment of the world in which Garlock resolved claims before this bankruptcy case. This is the world that Dr. Peterson and Rabinovitz want to use for their estimation of Garlock's future settlements.

The fact is, there is no truth in Garlock's settlements. They're inflated, and they cannot be used as a

reasonable proxy for liability, or even as a proxy for reasonable settlement.

The Chapter 11 ensures that Garlock's responsibility for claims will be determined with full and fair access to all of the evidence, and we offer an approach based on law and evidence that takes advantage of that access.

Thank you very much. I believe Dan wants to say a few words about the case that Coltec will present.

THE COURT: All right. Mr. Clodfelter.

MR. CASSADA: Mr. Clodfelter. Excuse me.

MR. CLODFELTER: Your Honor, I'm not going to say anything secret, so if the court wants to reopen, that's your call.

THE COURT: Well, we will. There's not a herd of people wanting to get in.

MR. CLODFELTER: Good morning, Your Honor. It's, I think, still morning, and I'm going to be brief, I hope. I have only one point I want to elaborate, and it's a point that Mr. Cassada made, but I think it warrants some expansion. It's perhaps somewhat obvious, but sometimes the obvious is what really needs to be said. And it goes to what we think is the fundamental difference between the approaches that are being taken in this proceeding, and in fact in the whole Chapter 11 case by the debtors and by the committee and by the FCR. And I can boil it down into one sentence. We are in

this court for a reason.

Very simply, in the non-bankruptcy processes that we experience with resolving the asbestos tort claims, those processes were unsustainable. They just could not continue. We're here today because the continuation of those unsustainable processes would have benefited no constituency in this case. And the unsustainability of those processes is of importance not just to Garlock and to its other unsecured creditors and to its equity owner whom I represent, but also to those individuals whose asbestos claims have not yet arisen, have not yet been presented, and that will not be the case for many years to come.

And so we are here to use the bankruptcy processes and the bankruptcy rules to establish a sustainable process going forward from this point.

A sustainable process for resolving claims in the future that will benefit not just Garlock and its owners and other creditors, but also asbestos claimants against Garlock.

Coltec is only going to offer one witness in this proceeding, Dr. James Heckman, University of Chicago, econometrician and a recipient of the Nobel prize in economics.

Among other things that Dr. Heckman -- commenting on the counter-factual world presented to you by the committee and the FCR, will make the very common sense point that it is

absolutely absurd to project that any company would ever continue to pay an ongoing stream of liabilities that are projected to exceed the present value of its assets, expresses a function of its future operating income. There is simply no economic incentive to continue a losing proposition.

We're here in July and we're over three years into the Chapter 11 case. But even now, three years later, the committee and the FCR are still in denial about the proposition that I just stated. They're in denial about the fact that we're here in this courtroom, and not still in the pre-bankruptcy tort process.

And the case they will present to you in this estimation proceeding demonstrates their continuing denial of that fundamental fact.

Their justification that they will offer for the case that they're going to present and their denial of our being here has shifted somewhat of the course over the last three years.

At first the very beginning of the case they were heard to say, well, this is the way you do it, Judge, because this is the way everyone has always done it, and therefore you must do it that way. This is the so called standard methodology for doing claims estimation.

That myth was long ago exploited by the briefing of the parties, setting out exactly what actually happened in

other Chapter 11 asbestos cases, and how and why estimations were done in those cases, and exactly the way they were done at the time they were done.

I won't repeat that here, except to say that all of those cases differ in important ways from the estimation task that you confront.

You are not being called upon to do an estimation for the purpose of providing a general validation or cross check for a consensual plan or an agreement already reached among the parties to the case.

The task in this proceeding is not being conducted for a discrete or a single purpose, such as to apply as in *Armstrong*, the antidiscrimination rule with respect to the treatment of different classes of creditors.

The estimation task that this court confronts will require a more nuanced analysis. It will require findings, and judgments about multiple discrete issues that the parties then take away from this proceeding, formulate their plans for reorganization, to decide the classifications issues and the voting issues, to structure a post-reorganization trust and perhaps to conduct negotiations about all of those topics.

A somewhat more refined, but still the same variation of basic theme of the committee and the FCR's contention that you must do what they say because everyone else has done it, then emerged in the following form:

You are required to follow applicable non-bankruptcy tort law in estimating, or for that matter, in actually adjudicating or allowing claims, and therefore you must estimate those claims by replaying in this court, the outcomes that would have been realized in the non-bankruptcy tort system.

This version of the case that they will present to you as we have previously argued in our briefing is simply a plain old garden variety *non sequitur*.

The substantive principles of state tort law drive the court's estimation, and guide the decision as to whether or not an asserted claim or group of claims, is or is not valid against these debtors. And if they may be valid, in what amount they should be estimated. But that is a very far cry from the proposition that you should use and repeat in this court, the results of the unbalanced processes that occurred in the litigation and resolution of claims in the non-bankruptcy system.

It is the point we argued in our brief a year ago, and I won't belabor here.

Later on a new and interesting rationale for the committee and the FCR's position emerged. It was articulated by Mr. Swett in the June 27 argument against the debtor's renewed motion under Rule 408 to exclude evidence of prerequisite settlements. It was also repeated by the FCR's

expert witness in her deposition and we will likely explore that point further when she testifies. And the thesis goes something like this:

In this proceeding, Your Honor really isn't estimating tort liabilities at all. What you are estimating is a set of contract liabilities based on negotiations between Garlock and asbestos claimants. And that's why Garlock's pre-bankruptcy's settlements are determinative of this estimation proceeding.

You might, in other words, under this kind of reasoning you might think of the asbestos claimants as sellers of releases, and Garlock as a buyer of releases. That's a very clever theory, Your Honor, but it still rests on the fundamental thesis, the purpose of this proceeding is to replicate the results that would have been realized, had bankruptcy never occur.

The analogy though that has emerged in this is actually quite apt, but not for the reason that the committee and the FCR have contended. If you think about markets, economists speak of efficient markets as being ones in which the relative prices at which different products change hands between buyers and sellers, are a reliable measure of their real worth or value to the market participants.

Efficient markets are marked by transparency, information about the characteristics of the products being

offered, information about the identities of the buyers and sellers, information about the prices at which the products change hands, is known to or known by all participants in real time in the marketplace.

Efficient markets exhibit consistently applied rules of operation that do not favor one group of sellers over another, or one group of buyers over another, or buyers that were sellers or vice versa.

Most, if not all efficient markets have a traffic cop or a regulator to ensure that transparency and consistent application of trading rules in the market are observed by all participants, and exclude or discipline any variations or departures from those rules.

In a highly efficient market, buying and selling asbestos claim releases, the question of whether the price of the thing and its true value that are negotiated in the marketplace does not rise. Whether those are different does not rise.

But the asbestos claiming and claims resolution markets, to use the ACC's analogy and the expert's analogy that existed outside bankruptcy, are as the debtors have demonstrated throughout the case and will demonstrate further in this proceeding, notoriously inefficient markets that have historically been characterized by wide and shifting disparities in the availability of information among the

market participants, large inequities in bargaining power among the participants based upon control of that information and those disparities, inconsistently applied rules of conduct that vary from jurisdiction to jurisdiction, and historical disruptions that have caused wide price swings in the prices offered and paid for those asbestos releases.

Most notable examples that you're well familiar with are the early flood of mass screen non-malignant claims that flooded the market and later were withdrawn from the market.

In such inefficient claim buying and selling markets, one cannot have confidence that the prices negotiated between buyers and sellers are reliable indicator of the true value participants could place on the products being traded.

The whole point of this Chapter 11 case is to return to a more efficient, and as I said at the beginning, sustainable market that fairly treats debtors and creditors alike.

One in which information is freely available, and is exchanged among the release buyers and the release sellers in which there are no information distortions; in which transaction costs for buying and selling are minimized; and in which there are clearly stated and equitably applied rules for how the market will function, backed up by the force of the court. That's the whole goal of a plan of reorganization. And it is why the future market for the resolution of asbestos

claims against Garlock cannot and will not simply be a repetition of the past.

So if then Garlock's pre-bankruptcy settlements are not dispositive in this estimation proceeding, what exactly do they mean? And here Your Honor is going to be called upon to unbake the cake.

On the question of what they do mean, the settlements, pre-bankruptcy, the parties will debate for the next three weeks on the relative extent to which the pre-bankruptcy settlements were an amalgam of Garlock's legal liability if it had taken cases to trial with complete information, and applying proper rules of substantive tort law, versus the extent to which those settlements were reflective of Garlock's avoided costs of litigation trial.

The committee and the FCR have contended throughout this case that these two ingredients, the evidence concerning the actual liability, and the cost of defense are baked into, that's their phrase, and you've heard it before from Mr. Cassada, are baked into the settlements so you don't really need to worry about it any further yourself.

They may be baked in, but the heart of the case that you have in the next three weeks is the relative weight to be assigned to those two major ingredients that were baked into the settlements, actual liability and avoided litigation costs.

That matters greatly to the outcome of this proceeding, because the avoided litigation cost element of that baked cake is necessarily going to be very different in the future in this case, and under a plan of reorganization, than it was before bankruptcy was filed.

It will not be possible for Your Honor to estimate the way in which those differences should affect your estimation ruling, unless the court first understands how, and in what ways, and in what measure those two elements, legal liability and avoided litigation costs were baked into the settlement cake in the first place.

Garlock's evidence will show, as Mr. Cassada has said, that when properly modeled by valid econometric methodology, over 90 percent of Garlock's pre-bankruptcy settlement payments reflected a value of zero on the liability side, under applicable state substantive tort law.

And for that reason, over 90 percent of the present anticipated future claims against Garlock should likewise be estimated to have a zero value, for purposes of determining whether they are valid claims that would be allowable if adjudicated to conclusion in those cases.

To demonstrate the correctness of this proposition under controlling non-bankruptcy law, Garlock's evidence will demonstrate the scientific and legal basis for the proposition the merits case Mr. Harris described to you and that you will

hear further about, that case will support and serve to validate the conclusions of Garlock's econometric experts be demonstrating that Garlock's econometric estimation of its present and future liabilities is fully consistent with and supported by applicable non-bankruptcy tort law governing the validity of claims.

So to recap my one and only point this morning, Garlock is here in this court because the goal of this Chapter 11 case is to strip away the extraneous factors that go into negotiating settlements in the tort system, and to obtain an estimation of its actual liabilities under applicable substantive law.

With that estimation in hand, the parties can then craft a reorganization proposal that is equitable among claimants holding different types of claims against the debtors, equitable as between present claimants and future claimants, and equitable as between asbestos claimants and all other constituencies holding claims against Garlock. That is the sole purpose and goal of this proceeding and these cases.

If instead the goal is to reproduce in this proceeding and in this case what would have happened to Garlock outside bankruptcy, then this proceeding and the entire Chapter 11 case is pointless.

Thank you, Your Honor.

THE COURT: Mr. Guy, are you going to go first --

MR. GUY: I am, Your Honor.

THE COURT: Are you going to go first for your side? Okay. Good.

MR. GUY: It's now good afternoon, Your Honor, at least by my watch.

What was supposed to be an hour and a half became two hours and 20 minutes. I fear that we're going to have a repeat of that. But for our purposes, the FCR's purposes --

THE COURT: You'll only have eight days of it.

MR. GUY: That's right, Your Honor. It all adds up. We'll keep track.

Your Honor, Jonathan Guy for the Future Claimants Representative, Joseph Grier, III.

Your Honor, I know what we're here today to do, because Your Honor told me. It's in your order. We're here today to start a process so we can calculate the aggregate amount of money that Garlock will require to satisfy present and future mesothelioma claims, not non-malignant claims. We heard from Mr. Cassada about all the perils of non-malignant claims.

But we're here today to calculate the aggregate amount for the future mesothelioma claims. And we're here to do that in the real world, not an idealized world. How do I know that we're here to do that, because it's in your order, Your Honor. That's what we have tried to do in preparing for

this case.

Why do we need that estimate? We need that estimate to determine the feasibility of the debtor's plan, and the anticipated plan of the ACC or the FCR.

For our part, Your Honor, we have delayed in filing our plan for the simple reason that we want the results of this hearing to be incorporated in that plan.

Your Honor, we're not here to allow any individual claim or group of claims. Your Honor knows and recognizes in your order that we can't do that as a practical matter. There's something like 4,300 pending claims. There's too many of them, and the estates of the claimants have their rights, their jury trial rights under 28 U.S.C. 1441, to pursue their wrongful death claims.

Your Honor, I don't say wrongful death claims lightly. Because anyone who had a mesothelioma claim at the beginning of this case against Garlock is now dead.

Mr. Grier's constituency are the 20,000 plus claimants that will arise in the future. There appears to be an agreement amongst the parties, because of their reliance upon the Nicholson model and various variations of that. But there will be tens of thousands of claims against Garlock. Garlock of course disputes the merits of the claims, but they don't really dispute there will be tens of thousands of them.

Your Honor, the Court and parties are going to look

to the estimate that comes out of this hearing to determine whether their plans are feasible or not, but also whether they're fair and equitable, whether they satisfy the absolute priority rule, and whether critically from EnPro's prospective, whether the plans will garner at least 75 percent of the votes of asbestos claims, to obtain the special injunctive relief under 524(g).

In other words, everyone is looking at this estimate to determine whether a party's plan can be confirmed or not. That's the end game Your Honor, confirmation. That's our focus.

Your Honor, as part of that confirmation process, the debtors chose Mr. Grier. The ACC didn't choose Mr. Grier. The debtors chose Mr. Grier. And they chose him to be an independent fiduciary for future claims, one who's unaffiliated with any group. An individual known to the court and this community. Those that knew that Mr. Grier would fulfill his duties to future claimants with integrity and fairness.

Our firm which was recommended to Mr. Grier, is not affiliated with any particular group. I was counsel for Shook and Fletcher a debtor just like Garlock, that reorganized. I also acted as counsel for Cooper Industries, a co-defendant of Garlock's. The same is true of Dr. Rabinovitz, Your Honor. For 40 years of her professional

career she has acted as an expert in numerous cases, going back to A.H. Robins and before. She's acted for courts, she's represented debtors, you saw that from Mr. Cassada's presentation, insurer's solvent companies and fiduciaries like the FCR.

Why do I raise that in the opening, Your Honor? For the very simple reason that we do not come to this case with any particular ideology, any particular prejudice, or any vested interest. We certainly don't come to this case with any view of what the right number should be. We're not picking a number and then trying to justify it.

Your Honor, in asking what is fair and equitable to future claimants, we have to ask, in fact we have no choice but to ask, what present claimants were paid when the merits of their cases were analyzed and weighed by both parties, by both adversaries. What were they paid in that situation?

And in Garlock's case, that happened in two different situations; trial, settlement; 99.7 percent of their cases they settled. That was their choice, Your Honor. That was their protocol.

We do not ask what present claimants were paid in an idealized world that can never be tested. Whether it be one posited by Garlock or one posited by the plaintiffs. We asked how did the real world value the claims of mesothelioma victims when they were presented in state courts under state

law across the country. How were they resolved, and at what value.

Your Honor, over the next three weeks you're going to hear a great deal of testimony as to the merit and otherwise of Garlock's defenses to mesothelioma claims.

You have heard from Mr. Harris, Garlock's very capable defense counsel, that it's impossible to contract mesothelioma from Garlock's products. And in every instance, anybody who has mesothelioma, who may have worked around Garlock products, got it from someone else's product. You will hear from Mr. Harris why those defenses were successful at trial. You will also hear from the ACC and Mr. Finch as to why they were not.

But the reality is, regardless of the strength or weaknesses of those defenses, Garlock faced significant trial risk. We can even see that from the demonstratives that were shown earlier. Eight percent of the time when they had all the information available to them, they lost. That's a significant trial risk. You only have no trial risk when you never lose.

And they knew that trial risk, Your Honor, increased substantially when co-defendants filed for bankruptcy. That's a reality that's obvious to everyone in this courtroom. If there are fewer people in the courtroom, your trial risk increases.

Your Honor, they assessed that risk in the period before their bankruptcy. They considered the strength and weaknesses of their defenses, and they settled their potential liability at trial in nearly every instance.

In a five year timeframe, 12,000 claims, Your Honor, going back to the beginning of their mesothelioma cases, we're talking about 26,000 claims. That's the data that we rely upon, Your Honor. We have to rely upon that data because that's real world data. That is a very robust database.

Your Honor, and in those settlements, critically, Garlock asked for exposure evidence. They didn't just write a check to anybody who turned up. They wanted to know that there was exposure to their products.

And when they settled, Your Honor, equally critically, they never paid any other company's share. They settled their share. And critically in those settlements, Your Honor, they never said, despite all you've heard about those 15 settlements, in the thousands of settlements they never said, represent whose products you were exposed to. They had the ability to do that. They didn't do it, Your Honor, because they didn't attach importance to it, because they were settling their responsibility fully understanding that in every instance there would be exposure to other companies' products, because it was the nature of the location of Garlock's products. They're in industrial settings. There

will be other products, always, around anyone who's working on a Garlock gasket in an industrial setting.

In the end, Your Honor, what they've paid to resolve claims, Mr. Clodfelter is right, they paid a market price. Where he's wrong is that the information was available to them. They knew about the science. They knew about the state of the law. They knew about exposures to other companies' products. That's the real world, not an idealized world.

Your Honor, from that real world we can reasonably and reliably project an aggregate number that Garlock would need to satisfy present and future mesothelioma claims. That's what Dr. Rabinovitz did here.

We have two witnesses, Your Honor, you will be pleased to know, Dr. Rabinovitz and Mr. Radecki who assisted her in discount rate calculations.

Your Honor, Dr. Rabinovitz uses an accepted and established methodology that relies upon observable data, Garlock's data. She asked for and was given Garlock's database. Garlock updated that database in May 2011, Your Honor, in the middle of the bankruptcy case. She relied upon that updated database. They never subsequently updated it. That's what she used, and she used that database from 12,000 claims that Garlock either dismissed, tried to jury, or settled. From that data she calculated a forecast of the range of approximately $1.3 billion, including defense costs,

Your Honor.

How do we know from that database, that that database represented thousands and thousands of individual occasions where the debtors considered the merits of claims and valued them? How do we know that, Your Honor? We know that because they said so.

In 2006 in their 10-K, which was issued December of 2006, this is what they said about their settlements. I don't know whether you can read that easily, Your Honor, but we'll certainly get you a copy. I believe copies have been previously submitted as attachments to our papers. But this is what they say.

Settlements are made without any admission of liability.

Yes, of course. That's standard. But that doesn't mean the settlement doesn't resolve their potential liability, otherwise why would you settle?

Now, what do they take into account when they settle?

Settlement amounts vary depending upon a number of factors, including the jurisdiction where the action was brought, the nature and extent of the disease alleged, and the associated medical evidence, the age and occupation of the plaintiff, the presence or absence of other possible causes of the plaintiff's alleged illness. Note, the presence or

absence of other possible causes of the plaintiff's alleged illness. Alternative sources of payment available to the plaintiff.

That would be bankrupt defendants and solvent defendants. The availability of legal defenses. Those are the defenses you're going to hear about ad nauseam, Your Honor. They know how strong their defenses are, Your Honor. They believe passionately in their defenses. They weighed the strength of those defenses when they settled, and whether the action is an individual one or part of a group.

Your Honor, if their defenses were weaker, they would have paid more.

Now, this is key, and these are not the words of any expert, Your Honor. These are the words from EnPro's 10-K.

"Before any payment on a settled claim is made, the claimant is required to submit a medical report acceptable to Garlock" -- acceptable to Garlock -- "substantiating the asbestos-related illness, and meeting specific criteria of disability. In addition, sworn testimony or other testimony that the claimant worked with or around Garlock asbestos-containing products is required. The claimant is also required to sign a full and unconditional release of Garlock and its affiliates."

No one else, just Garlock. Your Honor -- I apologize, it's difficult to read.

Your Honor, Dr. Bates uses those numbers to forecast

what would be paid in the future. The very thing that you asked us to do, make a reasonable and reliable estimate of the aggregate amount of money that Garlock will require to satisfy present and future mesothelioma claims.

Dr. Bates, the debtor's expert did just that. Using, as Mr. Cassada said, econometrics and reliable principles.

Critically, Your Honor, when EnPro did that for Garlock, they say, "we focus on future cash flows to prepare our estimate. We make assumptions about declining future asbestos spending based on past trends, publicly available epidemiological data, current agreements with plaintiff firms, and our judgment about the current and future litigation department; the availability of claims of other payment sources; both co-defendants and 524(g) trusts."

Your Honor, in 2006, they're doing exactly what we should do. They're doing it. They've done it. The input and insight provided to us by Bates White. And then they say, we adjust our estimate when current and future cash flow results and long trends suggest that the targets cannot be met or will be significantly exceeded.

As a result, we have a process that we believe produces the best, their words, Your Honor, the best estimate of future liability for the 10-year time period within the Bates range.

Just 10 years, Your Honor, not to 2053 which is what we're doing here, just 10 years.

What was that number, Your Honor? Remember this is their number, and you know that they're going to be not rushing to the biggest number -- $561 million, not including defense costs. At the bottom there it says, conceding that this is not a perfect estimate, no one can make a perfect estimate in the world of asbestos. Scenarios continue to exist that could result in a total estimated liability for Garlock in excess of 1 billion.

Your Honor, Mr. Cassada said that Dr. Rabinovitz's number of 960 million, not including defense costs, was astonishing; astonishing. This is EnPro's estimate, 1 billion. I don't think it's so astonishing when the other party in the case was almost at the same number.

Your Honor, these are not the only times they estimated their asbestos liabilities. In 2004 they did internal estimates. Mr. Magee, who we have the greatest respect for, signed off on those estimates. He estimated the number to be in the range of 1.14 billion under certain scenarios. That's the liability for other open claims, and just five years of probable future claims.

Your Honor, lest you think that the number changed dramatically in their 10-K from March 2010, again, they reiterate the number could be $1 billion.

"Scenarios continue to exist that could result in total future asbestos related expenditures for Garlock of $1 billion."

And Your Honor, when they internally calculated the number for the timeframe that is relevant for us, which is when everybody thinks there will be no more mesothelioma claims because of Garlock's products, using fairly respected incidence models out through the 2050 range. Your Honor, when they calculated that number internally, and they came up with different scenarios, I freely concede that. They came up with a number of $1.27 billion.

Those are the estimates that Mr. Magee prepared that we had the big fight about earlier, Your Honor.

Your Honor, these were merit based estimates, because they were based upon claims that were paid when they considered the merits of those claims. And they priced them accordingly in their discussions with the other party. They were estimates that were done internally, when there was no need for advocacy. They were estimates that were done in securities filings where there was every need to have strict disclosures grounded in reality.

Now, we're in bankruptcy. In bankruptcy we depart to an idealized world. Garlock says, and Coltec says, well, on the merits we have no liability; zero. No one could ever get sick from our products. We have zero liability to the

26,000 potential claims against us.

What they really should be saying in this courtroom, if they were true to that, Your Honor, please estimate our liability at nothing. But they're not comfortable with that number. Because it's such a radical departure from reality.

So it says, while Dr. Bates has come up with this model, where every claim -- every claimant, all 26,000 claimants go to verdict at no cost to Garlock, and only a tiny percentage win, and those that win, by the way, they share with 36 other co-defendants. It's a perfect world, Your Honor. If you were to take 26,000 claims to verdict, it would cost billions and billions and billions of dollars.

But after that process Dr. Bates says, he thinks the number is 125 million. But the debtors aren't really comfortable with that number either. They say, well, we actually think 270 is the right number. We put 270 in our plan, and you, Your Honor, and Mr. Grier my client, we can be comfortable that that's enough. Don't worry, it's enough. Please believe that this number makes our plan feasible. Please believe this number makes our plan fair and equitable to future claimants.

Remember, Your Honor, we don't come to this case with a number. All we care about is future claimants are treated fairly and equitably looking at what was paid in the past.

Claimants, Your Honor, will not accept values post-petition that radically depart from the numbers they accepted when the merits were considered between the parties prepetition.

And how can it be that on June 4th, the day before Garlock filed for bankruptcy, by its own calculations, their asbestos liabilities were potentially in excess of $1 billion. The day after June 5th, suddenly the number's $125 million.

Your Honor, in the end, Garlock's post-petition idealized numbers are just-in plug numbers that preserve equity. Your Honor, I represented debtors. I fully understand the desire to preserve equity. But if they truly believe the number is zero, they shouldn't be here. If they truly believe the number is $125 million they shouldn't be here. And if they truly believe the number is $270 million, they shouldn't be here.

Now, put aside all this about, well now we want you, Your Honor, to rewrite state laws, rewrite the tort system, come up with a better model, come up with a new model for resolving asbestos claims.

The reality is, the debtors know under the model that we all have to live with, flawed or not, they're insolvent. They know that, Your Honor. That's why they're here.

Your Honor, how do I say that with confidence?

Because I've read the affidavit of Mr. Pomeroy, the first day affidavit. He was very careful to not say that the company was insolvent. But the words that he uses tell a different picture. This is from June 5th, 2010, 3 years ago. Mr. Pomeroy says the debtors are not in business distress, but overwhelmed by the financial institutional costs of defending and resolving tens of thousands of asbestos claims in state and federal courts across the country.

Continuing on he says, Garlock believed until recently it would survive the bankruptcy wave, because most of the major asbestos manufacturers had emerged from bankruptcy by funding post-confirmation trusts.

Your Honor, Mr. Cassada highlighted a statement from our expert, Dr. Rabinovitz, who I'm confident you're going to find is a truly independent expert. She did believe that those monies would make a difference. Nothing speaks to her independence more than the fact that she was articulating that belief in 2007. But it didn't happen.

Your Honor, paragraph 19 they say, Mr. Pomeroy says, the cash flows necessary to defend and resolve asbestos claims in this tort system threaten to deplete rapidly, both remaining insurance available to Garlock for such claims and Garlock's cash flow from operations. Without Chapter 11 protection, the value of the debtors' core businesses and the debtors' ability to compete effectively in the marketplace

will be irrevocably damaged.

So that's the reality, Your Honor. The reality we have is, the debtors settled thousands and thousands of mesothelioma claims. They settled those claims asking for exposure evidence, understanding the merits and strengths and weaknesses of their defenses. Understanding the reality of the tort system. Understanding what disclosure was required in the state courts where these claims were being brought. Understanding what claims could be brought against the trusts and against solvent defendants. They understood all of that, Your Honor. Because the plaintiffs didn't change, 1995 pipefitter; 2005 pipefitter. That pipefitter has the same exposure to the same types of products. No one in this courtroom would disavow that statement, Your Honor.

Your Honor, EnPro only has equity value in an idealized world that doesn't exist and could never exist.

It doesn't believe its own numbers. Because if it did, it wouldn't be here. It is here because it knows if it dismisses this case, it won't survive. But the path urged by Garlock takes us nowhere. A $270 million plan will not be accepted by current claimants. They will not get the 524(g) protection they want. And to the extent Garlock wants to fund a plan under its theory that every case goes to trial, it hasn't put enough money on the table, and it doesn't have that kind of money.

Your Honor, when you hear all the testimony over the next three weeks, fact testimony, the expert testimony, I would ask that you ask yourself, if I appointed an expert, which you have the right to do under Rule 706, if you had appointed your own independent expert to answer your question, the aggregate amount of money that Garlock will require to satisfy present and future mesothelioma claims. Would you find it credible if that expert said the number was $125 million, when the day before its bankruptcy that expert's client was estimating the number in excess of $1 billion, using that same expert's methodology?

Your Honor, in conclusion, we urge the court to estimate the amount after you've heard all the evidence, to satisfy present and future mesothelioma claims by the reference to the amount that Garlock itself paid to satisfy such claims, and put Garlock on a path to confirmation.

Thank you, Your Honor.

THE COURT: It's 12:30, why don't we break for lunch.

MR. SWETT: That's fine, Your Honor.

THE COURT: How long do you want to take? I realize that there's a lot goes on during the trial besides the eating of lunch. We'll take an hour and a half or an hour?

MR. CASSADA: Well, I'll speak for our side, Your Honor. We are prepared to move forward quickly. We're having

box lunches brought in. We're going to eat here. We'll be ready to go, a half hour or at the earliest time that the court is available.

MR. SWETT: Your Honor, we would suggest a one hour lunch break.

THE COURT: Okay. Let's just come back at 1:30.

(Lunch recess.)

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CERTIFICATE OF REPORTER

I, Laura Andersen, Official Court Reporter, certify that the foregoing transcript is a true and correct transcript of the proceedings taken and transcribed by me to the best of my ability.

Dated this the 22nd day of July, 2013.

s/Laura Andersen
Laura Andersen, RMR
Official Court Reporter